UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STEFAN QIN, VIRGIL TECHNOLOGIES LLC, MONTGOMERY TECHNOLOGIES LLC, VIRGIL QUANTITATIVE RESEARCH, LLC, VIRGIL CAPITAL LLC, and VQR PARTNERS LLC,

Defendants.

Case No.: 20-cv-10849 (JGLC)

MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S MOTION TO APPROVE THE DISTRIBUTION PLAN, DISTRIBUTION PROCEDURES, AND INITIAL DISTRIBUTION

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Attorneys for Receiver Robert A. Musiala, Jr.

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. JURISDICTION 3

III. PROCEDURAL HISTORY 3

IV. THE RECEIVER'S PROPOSED DISTRIBUTION PLAN 5

A. Claims and Asset Overview 5

B. Proposed Treatment of Claims 6

1. Classification of Claims 6

2. Reserve 6

a. Reserve for Unresolved Objections 6

b. Reserve for Professional Fees and Administrative and Tax Expenses 7

C. Proposed Distribution Methodology 7

1. Allowed Investor Claimants 8

2. Allowed Non-Investor Claimants 12

3. Forfeited Distributions 12

4. Releases and Notice Provisions 13

V. STANDARD OF REVIEW 13

VI. DISCUSSION 14

A. Pro Rata Distribution is Appropriate in Cases Involving Ponzi Schemes 15

B. Rising Tide is the Fairest and Most Equitable Under the Circumstances 18

C. Rising Tide is Superior to Net Investment as a Distribution Method 20

D. The Distribution Plan Provides the Largest Recovery to the Greatest Number of Allowed Investor Claimants. 21

E. The Receiver's Treatment of Non-Investor Claimants is Fair and Equitable 22

F. The Distribution Plan Comports With Due Process 23

VII. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Cases

CFTC v. Alexandre,
No. 22-cv-3822, 2025 WL 252435 (S.D.N.Y. Jan. 21, 2025) .... *passim*

CFTC v. Barki,
No. 3:09 CV 106, 2009 WL 3839389 (W.D.N.C. Nov.12, 2009) 22

CFTC v. Equity Fin. Grp., LLC,
No. Civ.04-1512, 2005 WL 2143975 (D.N.J. Sept. 2, 2005) 19, 21

CFTC v. Rust Rare Coin, Inc.,
No. 2:18-cv-00892, 2020 WL 4904165 (D. Utah Aug. 20, 2020)....................................19, 23

CFTC v. Walsh,
712 F.3d 735 (2d Cir. 2013)..16

Cleveland Bd. Of Educ. v. Loudermill,
470 U.S. 532 (1985)..24

Cunningham v. Brown,
265 U.S. 1 (1924)...15, 16

Eberhard v. Marcu,
530 F.3d 122 (2d Cir. 2008)...14, 16

Horwitt v. Flatiron Partners, LP,
No. 21-2245, 2023 WL 192500 (2d Cir. Jan. 17, 2023) 23

Lemon v. Kurtzman,
411 U.S. 192 (1973) 14

Off. Comm. Of Unsecured Creditors of WorldCom, Inc. v. SEC,
467 F.3d 73 (2d Cir. 2006)..15

SEC v. Aequitas Mgmt., LLC,
No. 3:16-cv-00438, 2020 WL 1528249 (D. Or. Mar. 31, 2020) 19

SEC v. Amerindo Inv. Advisors Inc.,
No. 05 Civ. 5231, 2014 WL 2112032 (S.D.N.Y. May 6, 2014)...17

SEC v. Amerindo Inv. Advisors Inc.,
No. 05 Civ. 5231, 2016 WL 10821985 (S.D.N.Y. May 20, 2016)...13

SEC v. Amerindo Inv. Advisors, Inc.,
No. 05 Civ. 5231, 2017 WL 3017504 (S.D.N.Y. July 14, 2017) 13

SEC. v. AR Cap., LLC,
No. 19 Civ. 6603, 2021 WL 1988084 (S.D.N.Y. May 18, 2021)....................13

SEC v. Byers,
609 F.3d 87 (2d Cir. 2010)....................14

SEC v. Byers,
637 F. Supp. 2d 166 (S.D.N.Y. 2009)....................14, 16, 17, 22

SEC. v. Callahan,
193 F. Supp. 3d 177 (E.D.N.Y. 2016) 19

SEC v. Certain Unknown Purchasers of Common Stock,
817 F.2d 1018 (2d Cir. 1987)....................14

SEC v. Credit Bancorp, Ltd.,
290 F.3d 80 (2d Cir. 2002)....................13, 14, 16, 18

SEC v. Credit Bancorp, Ltd.,
99-Civ-11395, 2000 WL 1752979 (S.D.N.Y. Nov. 29, 2000), *aff'd*, 290 F.3d 80 (2d Cir. 2002)....................15

SEC v. Elliott,
953 F.2d 1560 (11th Cir. 1992) 18

SEC v. Fischbach Corp.,
133 F.3d 170 (2d Cir. 1997)....................14

SEC v. Forex Asset Mgmt. LLC,
242 F.3d 325 (5th Cir. 2001) 18

SEC v. Huber,
702 F.3d 903 (7th Cir. 2012) 19, 22

SEC v. Infinity Grp. Co.,
226 F. App'x. 217 (3d Cir. 2007) 18

SEC v. Malek,
397 F. App'x 711 (2d Cir. 2010) 16, 17

SEC v. McGinn, Smith & Co., Inc.,
No. 1:10-cv-457, 2016 WL 6459795 (N.D.N.Y. Oct. 31, 2016)....................17, 20

SEC v. Orgel,
407 F. App'x 504 (2d Cir. 2010) 13, 14

SEC v. Parish,
No. 2:07-cv-00919, 2010 WL 5394736 (D.S.C. Feb. 10, 2010) 19, 20, 22

SEC v. Pension Fund of Am. L.C.,
377 F. App'x 957 (11th Cir. 2010) 14

SEC v. TCA Fund Mgmt. Gr. Corp.,
No. 20-21964-CIV, 2022 WL 17816956 (S.D. Fla. Dec. 2, 2022)..23

SEC v. Torchia,
922 F.3d 1307 (11th Cir. 2019) 14

SEC v. Total Wealth Mgmt., Inc.,
No. 15-cv-226, 2018 WL 3456007 (S.D. Cal. July 17, 2018)..15

SEC v. Varacchi,
No. 3:17-cv-00155, 2021 WL 10361074 (D. Conn. July 30, 2021).......................................19

SEC v. Varacchi,
No. 3:17-cv-00155 (D. Conn. Oct. 4, 2018) *aff'd Horwitt v. Flatiron Partners, LP*, No. 21-2245, 2023 WL 192500 (2d Cir. Jan. 17, 2023) 23

SEC v. Wang,
944 F.2d 80 (2d Cir. 1991)..13

SEC v. Wealth Mgmt., LLC,
628 F.3d 323 (7th Cir. 2010) 14, 18

SEC v. Wencke,
622 F.2d 1363 (9th Cir. 1980) 14

United States v. Durham,
86 F.3d 70 (5th Cir. 1996) 16

United States v. Qin,
21-cr-00075 (S.D.N.Y. Feb. 12, 2021) 3

United States v. Qin,
21-cr-00075 (S.D.N.Y. Sept. 29, 2021) 3

Statutes

15 U.S.C. § 77v..3

15 U.S.C. §§ 78(aa)..3

15 U.S.C. § 78u(e) 3

Robert A. Musiala Jr., as Court-appointed receiver ("Receiver") in the above-captioned action, by and through his undersigned counsel, respectfully submits this memorandum of law together with the attached proposed distribution plan ("Distribution Plan" or "Plan"), in support of the Receiver's motion to (1) approve the Distribution Plan and distribution procedures and (2) make an initial distribution to Allowed Claimants (as herein defined) ("Motion").

I. PRELIMINARY STATEMENT

The Receiver has recovered and secured millions of dollars in Recoverable Assets[1] for distribution to the victims of Stefan Qin's fraud. The Receiver now proposes, and seeks the Court's approval for, a Distribution Plan and an initial distribution that will return these assets to the victims. The Receiver's proposed Plan ensures that each Allowed Investor Claimant[2] will achieve a minimum total return of at least 61.57%,[3] and that Allowed Non-Investor Claimants[4] will also receive a similar distribution.

Specifically, the Receiver proposes a Distribution Plan that would calculate payments to Allowed Investor Claimants *pro rata* using a "Rising Tide" methodology and use the same Rising Tide Percentage (defined herein) to calculate a distribution to Allowed Non-Investor Claimants. After careful consideration of the various distribution methods typically applied in Ponzi scheme receiverships, and in consultation with the SEC, the Receiver has determined that the use of Rising Tide is both fair and equitable. Unlike other methods, including the "Net

---

[1] Capitalized terms not otherwise defined herein are accorded the meaning afforded them in the Order Appointing Receiver (ECF No. 31; hereinafter "Receiver Order"); Memorandum of Law in Support of Receiver's Motion to Establish Claims Administration & Determination Procedures (ECF No. 303); Claims Schedule (ECF No. 360); and the Distribution Plan (attached as Exhibit A to the Fokas Decl.).

[2] An "Allowed Claimant" is defined as any Claimant holding a Resolved Claim with an Allowed Amount greater than zero. "Investor Claimants" are defined as Claimants in the Investor category.

[3] This represents the return percentage after the Initial Distribution, rounded to the nearest tenth, and includes withdrawals Claimants made during the Ponzi scheme. The overall return percentage may be higher based on subsequent Distributions.

[4] "Non-Investor Claimants" are defined as Claimants in the Employee and Unsecured Creditor categories.

Investment" method, Rising Tide takes into consideration not only the amount invested, but also the amount of the investment previously returned to the investor in order to determine what an Allowed Investor Claimant will receive under the Distribution Plan. This method ensures that Allowed Investor Claimants who received little or no return of funds during the Ponzi scheme will receive a distribution roughly on par with Allowed Investor Claimants who received a significant return of funds during the scheme, as opposed to the Net Investment distribution method that would further exacerbate the recovery gap between these Investor Claimants. In so doing, the Rising Tide method aims to level the playing field among similarly situated Investor Claimants, by providing a more equitable distribution for all Allowed Claimants so that the investment returns among those who withdrew funds during the fraud and those who did not are more closely aligned.

The Receiver also seeks authorization to make an initial distribution of approximately $30.3 million to Allowed Claimants. This sum represents approximately 91% of the Receivership Estate's total cash balance as of March 1, 2026.

For the reasons set forth herein, the Receiver seeks an order, substantially in the form submitted with this Motion, approving (i) the Receiver's Distribution Plan as set forth in **Exhibit A** attached to the Declaration of Jimmy Fokas ("Fokas Decl."); (ii) the use of a *pro rata* distribution method; (iii) the use of the Rising Tide method to calculate distributions; (iv) a reserve of approximately $3.16 million to cover claim Objections that have not yet been resolved along with professional fees and administrative and tax expenses; and (v) the payment by the Receiver of approximately $30.3 million in an initial interim distribution to Allowed Claimants in accordance with the procedures in the attached Distribution Plan. Plaintiff Securities and Exchange Commission ("SEC") consents to the proposed Plan and the relief requested herein.

II. JURISDICTION

The Court has jurisdiction over these proceedings pursuant to (i) Section 22 of the Securities Act of 1933 (15 U.S.C. § 77v), and (ii) Sections 21(e) and 27 of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78u(e) and 78aa) and jurisdiction over this Motion pursuant to the Receiver Order, which empowers the Receiver to (a) develop a fair and reasonable Liquidation Plan; (b) bring legal actions necessary or appropriate to discharge his duties, (c) take such action as may be approved by this Court, and (d) take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estates. Receiver Order at §§ I.7.I & K, VIII.33, and XII.44.

III. PROCEDURAL HISTORY

On December 22, 2020, the SEC commenced this action against Qin and entities he owned and controlled (ECF No. 1). Upon stipulation of the parties (ECF No. 29), on January 21, 2021, the Court entered the Receiver Order (ECF No. 31), appointing the Receiver and setting forth his mandate. On February 4, 2021, Qin pleaded guilty to one count of securities fraud and on September 15, 2021 was sentenced to 90 months in prison.[5]

Since his appointment, the Receiver has been marshalling and preserving all Recoverable Assets for distribution to defrauded creditors of the Receivership Estate. On August 8, 2022, the Court entered an order (ECF No. 168) (a) establishing 11:59 p.m., prevailing Eastern Time, on December 6, 2022 as the deadline for submissions of Claims against the Receivership Estate ("Bar Date") and (b) requiring that all known and unknown stakeholders with potential Claims be notified of the Bar Date. On August 26, 2022, the Receiver emailed notice of the Bar Date to

[5] Plea, *United States v. Qin*, 21-cr-00075 (S.D.N.Y. Feb. 12, 2021), ECF No. 12; and Sentencing, *United States v. Qin*, 21-cr-00075 (S.D.N.Y. Sept. 29, 2021) ECF No. 36, respectively.

all identified stakeholders, and between August 26, 2022 and August 30, 2022, the Receiver published notice to all unknown stakeholders via PR Newswire.

On April 8, 2024, the Receiver moved the Court for an order to approve the proposed procedures for determining and administering Claims timely filed against the Receivership Estate (ECF No. 303, "Claims Motion"). On December 20, 2024, the Court granted the Claims Motion in full (ECF No. 339, "Claims Order"), and (i) held that Qin used the Funds to operate a Ponzi scheme and commingled assets among the Receivership Entities; (ii) authorized the Receiver's use of a net investment method to calculate the Allowed Amount of Investor Claims; and (iii) approved the Receiver's procedures for determining and administering Claims and resolving Claim Objections. Thereafter, the Receiver implemented the process by which Claims could be fixed for eventual distribution under the terms of a plan to be approved by this Court.

On March 19, 2025, the Receiver emailed notice of Claim Determinations to all Claimants and provided 45 days for any Claimant to file an Objection thereto. On June 5, 2025, the Receiver filed a preliminary Claims Schedule with the Court, setting forth the then-current status of the Receiver's Claim Determinations, including all Resolved Claims and Pending Objections (ECF No. 360). Since then, the Receiver has been in contact with all Claimants who filed Objections, and has successfully resolved nine out of the eleven Pending Objections. An updated Claims Schedule containing the status of the Receiver's Claim Determinations as of the date of this filing, including Claims that have since been withdrawn ("Withdrawn Claims"), all Resolved Claims, and any remaining Unresolved Objections, is attached hereto as Schedule 1 of **Exhibit A** to the Fokas Decl.

IV. THE RECEIVER'S PROPOSED DISTRIBUTION PLAN

The Receiver's Distribution Plan returns significant funds to Allowed Investor Claimants—the Claimant class that suffered the greatest loss as a result of Qin's fraud—while ensuring that Allowed Non-Investor Claimants also receive a distribution. Using a Rising Tide *pro rata* methodology to calculate distribution amounts, the Receiver proposes to make an initial interim distribution ("Initial Distribution") to Allowed Claimants of approximately $30.3 million, in accordance with the Plan's procedures.

The Court has already determined that: (1) the Funds were operated as a Ponzi scheme; (2) Fund assets were extensively commingled; and (3) the Funds were commonly managed with investments regularly pooled to offset expenses across Receivership Entities. (*See* Claims Order, ECF No. 339 at 1, 6-8). The Receivership Estate holds insufficient assets to make all Allowed Claimants whole, thus making a *pro rata* distribution the proper method. Key provisions of the Plan, which is attached to this motion, are summarized below.

A. Claims and Asset Overview

A total of 114 Claims were timely submitted, five of which were subsequently Withdrawn. Of the 109 Claims determined by the Receiver, 107 have been finally determined and Resolved, and two are currently before the Court as Unresolved Objections (ECF No. 386). The chart below shows the current status of the Resolved Claims:

Claim Category	# of Resolved Claims	Aggregate Allowed Amount
Investor	72	$62,483,868.53
Investor/Employee	1	(Investor) $122,000.00 (Employee) $8,521.33
Employee	8	$64,459.92
Unsecured Creditor	3	$35,900.00
Denied	23	$0.00
Total	**107**	**$62,714,749.78**

As of March 1, 2026, the Receivership Estate held cash assets in the amount of $33,424,618.79.

B. Proposed Treatment of Claims

1. Classification of Claims

The Plan outlines three classifications of Claims eligible to receive distributions:

- **Class 1**: Investor Claims – Allowed Claims held by Allowed Investor Claimants. Distributions shall be made *pro rata* calculated based on the Rising Tide methodology. Plan at § 2.3.1.
- **Class 2**: Employee Claims – Allowed Claims held by Allowed Employee Claimants. Distributions shall be made *pro rata* and *pari passu* with Class 1 Claims (*i.e.*, at the same time and based on the same Rising Tide percentage paid to Allowed Investor Claimants). Plan at § 2.3.2.
- **Class 3**: Unsecured Creditor Claims – Allowed Claims held by Allowed Unsecured Creditor Claimants. Distributions shall be made *pro rata* and *pari passu* with Class 1 and 2 Claims. Plan at § 2.3.3.

2. Reserve

The Plan proposes to create a reserve of approximately $3.14 million (the "Reserve"), which the Receiver believes sufficient to cover the full anticipated value of any Unresolved Objections, professional fees, and administrative and tax expenses.

a. Reserve for Unresolved Objections

As noted in Section IV.A, *supra*, two Unresolved Objections remain and are before the Court for adjudication. So as not to delay payment of an Initial Distribution to Allowed Claimants, the Receiver proposes to reserve approximately $1.3 million, which represents an amount sufficient to pay an Initial Distribution to the Claimants asserting Unresolved Objections, in the event such Claims are allowed by the Court.[6] This amount represents 100% of the Disputed Amount asserted for Claim Number 10072, which is greater than the potential

[6] The Receiver has not reserved an amount for Claim Number 10094, as the Claimant withdrew more money than he invested, and therefore is not entitled to receive a Distribution. This Claimant has not disputed this fact in his Objection.

distribution this Claimant would be entitled to receive as a holder of an Allowed Employee Claim pursuant to the proposed Plan if the Claim is allowed by the Court.

Upon resolution or determination of each Unresolved Objection, and provided the Claim is allowed, the respective Claimant shall be entitled to receive an Initial Distribution paid *pro rata* pursuant to the Plan. Any excess reserve or reserved amounts for Unresolved Objections that are denied or disallowed by the Court will be returned to the Receivership Estate. A list of the reserved amounts proposed for each Unresolved Objection is attached hereto as **Exhibit B** to the Fokas Decl.

b. Reserve for Professional Fees and Administrative and Tax Expenses

In addition to the funds to be reserved for Unresolved Objections, the Receiver proposes to reserve approximately $1.84 million, which the Receiver, in consultation with his accountants, has determined is sufficient to cover professional fees and administrative and tax expenses until the dissolution of the Receivership. This amount is consistent with anticipated professional fees, expenses, and other costs reasonably necessary to complete the remaining tasks to close out the Receivership, including the distributions proposed in the Plan. Assets in this reserve will be used to disburse amounts in cash as and when such fees and expenses become due following application to and approval by this Court, as required by the Receiver Order. *Id*. at § XIII. Any reserved amounts for fees and expenses not disbursed will be released to the Receivership Estate for future *pro rata* distribution to Allowed Claimants pursuant to the Plan.

C. Proposed Distribution Methodology

Pursuant to this Court's December 20, 2024 Claims Order, the Receiver has consolidated all assets of the Receivership Estate into a single pool for the purposes of distributing assets to Allowed Claimants. *Id*. at 8. From the remaining non-Reserve assets of the Receivership Estate, the Receiver proposes to use a Rising Tide methodology to calculate and make *pro rata* distributions to Allowed Claimants, as more fully explained below. The Receiver currently anticipates two distributions: the Initial Distribution and a subsequent (and likely final) distribution to be determined by the Receiver and approved by the Court at a later date.

1. Allowed Investor Claimants

The specific amounts to be distributed to each Allowed Investor Claimant will be calculated based on a Rising Tide methodology, wherein any monies withdrawn or received by an investor during the Ponzi scheme will be deducted from the distribution amount to be paid by the Receiver under the Plan. Such treatment acknowledges the reality that any money received by an investor during the Ponzi scheme was paid by Qin from a pool of commingled investor deposits—the same pool that will now be used by the Receiver to make distributions under the Plan. Plan at § 4. By considering all amounts received by an Allowed Investor Claimant both pre- and post-Receivership, the Plan's Rising Tide methodology seeks to accomplish greater parity among similarly situated Allowed Investor Claimants and to bring all such Claimants to an equivalent overall rate of recovery on their investment.

Distributions to Allowed Investor Claimants will be calculated by applying the following formula: (1) Verified Investor Deposits;[7] (2) ***multiplied by*** the *pro rata* Rising Tide Percentage;[8] (3) ***minus*** the sum of any Verified Investor Withdrawals[9] and Receivership Distributions.[10] The

[7] Defined as the amount of a deposit of assets into the Funds prior to the Receivership Date, whether deposited directly or by a third party for or on behalf of an Investor (or otherwise properly attributable to such Investor, as determined by the Receiver and communicated to Claimant in the Claim Determination), net of fees and other transaction or banking costs.

[8] The Rising Tide Percentage will be determined by the Receiver in connection with each distribution contemplated under the Plan based on the available assets to be distributed.

[9] Defined as the amount of a withdrawal (or other receipt) of assets from the Receivership Estate, whether withdrawn directly by an Investor or by a third party for or on behalf of an Investor (or otherwise properly attributable to such Investor, as determined by the Receiver and communicated to Claimant in the Claim Determination) prior to the Receivership Date, irrespective of the characterization of such withdrawals as rebates, redemptions, return of principal, or otherwise.

[10] Defined as the total amount of any Distribution made by the Receiver pursuant to the Plan to or for the benefit of the Allowed Claimant prior to the applicable Distribution Date.

Rising Tide Percentage represents and is calculated as the percentage at which Allowed Investor Claimants who received little or no Verified Investor Withdrawals during the Ponzi scheme will be brought to the same (or close to the same) overall percentage return on their investment ("Investment Return Percentage" or "IRP") as Allowed Investor Claimants who received substantial Verified Investor Withdrawals. Under the Plan, an Allowed Investor Claimant who received either no Verified Investor Withdrawals or Verified Investor Withdrawals greater than zero but less than the Rising Tide Percentage will receive a distribution until their Investment Return Percentage equals the Rising Tide Percentage. An Allowed Investor Claimant who received Verified Investor Withdrawals such that their Investment Return Percentage exceeds the Rising Tide Percentage will not receive a distribution under the Plan until the Rising Tide Percentage exceeds their Investment Return Percentage.

The following hypothetical demonstrates how the Rising Tide method brings all claimants to a closer level of parity: There are three Allowed Investor Claimants—Investor A, B, and C—each of whom has Verified Investor Deposits of $100,000. Investor A received $0 in Verified Investor Withdrawals, Investor B received $20,000 in Verified Investor Withdrawals, and Investor C received $60,000 in Verified Investor Withdrawals. There is $100,000 in total assets available to be distributed from the estate. Based on the foregoing, distributions under the Plan would be calculated as follows:

As an initial step, the Investment Return Percentage for each Investor Claimant prior to any distribution from the Receivership would be calculated using the formula: **(Verified Investor Withdrawals ÷ Verified Investor Deposits)**. In this hypothetical, the IRP for Investor A would be 0% ($0 ÷ $100,000); for Investor B would be 20% ($20,000 ÷ $100,000); and for Investor C would be 60% ($60,000 ÷ $100,000).

Based on the above, and the $100,000 to be distributed, the Rising Tide Percentage would be calculated at 60%, which represents the percentage at which each Investor would be brought equal (or close) to the highest IRP for all Investors. In this hypothetical, Investor C has the highest IRP at 60%.

The actual distribution that each Investor would receive under the Plan is then determined using the formula: **(Verified Investor Deposits x Rising Tide Percentage) - Verified Investor Withdrawals**. In this hypothetical, with a Rising Tide Percentage of 60%, each Investor would be entitled to receive the following distributions under the Plan: Investor A would receive $60,000 (calculated as ($100,000 x .60) - $0)); Investor B would receive $40,000 (calculated as ($100,000 x .60) - $20,000)); and Investor C would receive $0 (calculated as ($100,000 x .60) - $60,000)).

The final step is to calculate each Investor's post-Plan distribution IRP using the formula: **(Verified Investor Withdrawals + Receivership Distribution) ÷ (Verified Investor Deposits)**. Here, that results in an Investment Return Percentage of 60% for each Investor.

The chart below illustrates the above calculations:

	Investor A	Investor B	Investor C
Verified Investor Deposits	$100,000	$100,000	$100,000
Verified Investor Withdrawals	$0	$20,000	$60,000
IRP (before Receiver Distribution)	0%	20%	60%
Rising Tide %	60%	60%	60%
Distribution Formula	($100,000 x 60%) - $0 = $60,000	($100,000 x 60%) - $20,000 = $40,000	($100,000 x 60%) - $60,000 = $0
Plan Distribution	$60,000	$40,000	$0
IRP (after Receiver Distribution)	60%	60%	60%

The Receiver believes that Rising Tide is the most equitable method for calculating distributions to Allowed Investor Claimants for several reasons. First, as demonstrated in the example above, it raises all Allowed Investor Claimants to a minimum overall total return on their investment. Second, in the context of a Ponzi scheme with innocent victims, it reduces discrepancies among similarly situated Investor Claimants—closing the gap between those Investor Claimants who received substantial distributions during the scheme and those that received little or none.

For the Initial Distribution, and based on an anticipated disbursement of $30.3 million, the Receiver proposes to set the Rising Tide Percentage at **61.57%**.[11] When such percentage is applied to the proposed disbursement of $30.3 million, it results in a distribution to 90% of Allowed Investor Claimants (66 out of 73)—each of whom during the Ponzi scheme and prior to the Initial Distribution received less than a 61.57% return on their investment. Receiving an Initial Distribution under the Plan, combined with any Verified Investor Withdrawals made during the Ponzi, will bring their total IRP to 61.57%. The average Initial Distribution to such Claimants will be $457,594.42. The remaining seven Allowed Investor Claimants—each of whom during the Ponzi scheme received more than a 61.57% return on their investment—will not receive an Initial Distribution. However, these Claimants have already received a return on their investment *greater than* the Rising Tide Percentage of 61.57% (specifically, between 65% and 92%), and some of these Claimants may be eligible to receive a future distribution as the Rising Tide Percentage increases for the anticipated final distribution.[12]

The Receiver believes that the Rising Tide methodology is the most equitable, fair, and reasonable method for determining distributions where, as here, there are insufficient funds to

[11] The total Rising Tide Percentage used to calculate the Initial Distribution is 61.56507314%, rounded to 61.57% for the purposes of this Motion. The Rising Tide Percentage was calculated by (a) determining each Allowed Investor Claimant's Investment Return Percentage (here, the IRPs ranged from 0%-92%); and then (b) determining the percentage at which the $30.3 million available for distribution would net the highest Investment Return Percentage for the largest number of Claimants.

[12] The Receiver cannot yet determine the amount of a second, and likely final, distribution, but the Rising Tide Percentage will likely increase on a subsequent distribution, and some of the seven Allowed Investor Claimants who are not eligible to receive a distribution from the Initial Distribution may receive one in a subsequent Distribution.

make all Investor Claimants whole, and some Investor Claimants received a larger return by fortuitously withdrawing more money from the same commingled pot prior to the Receivership.

2. Allowed Non-Investor Claimants

As noted in Section IV.A, *supra*, there are currently nine Allowed Employee Claimants and three Allowed Unsecured Creditor Claimants (together, "Non-Investor Claimants"). These Non-Investor Claimants have an aggregate Allowed Amount of $108,881.25, which represents a mere 0.174% of the total Allowed Amount for all Allowed Claimants. Because the overall impact on Initial Distributions to Allowed Investor Claimants will be minimal, the Plan proposes to provide *pro rata* distributions to all Allowed Non-Investor Claimants *pari passu* with Allowed Investor Claimants. Initial Distributions will be calculated using the same Rising Tide Percentage as Allowed Investor Claimants (61.57%), but applied directly to the Allowed Amount of the Claim, as Non-Investor Claimants will not have any "prior withdrawals" to consider. Plan at § 4.1.1.2. For example, using a Rising Tide Percentage of 61.57%, a Non-Investor Claimant with a hypothetical Allowed Amount of $10,000 would be entitled to receive an Initial Distribution of $6,157.

3. Forfeited Distributions

The Receiver proposes that any Allowed Claimant who fails to comply with the Plan's procedures and/or timely provide information required to facilitate any distribution payment will be deemed to have forfeited their right to receive such distribution ("Forfeited Distribution"), as set forth in greater detail in the Plan. Any cash allocated to a Forfeited Distribution shall be returned to the Receivership Estate for future *pro rata* distribution to Allowed Claimants pursuant to the Plan. Plan at § 4.4.2.

4. Releases and Notice Provisions

The Plan provides for a discharge of the Receivership Entities from all claims and liabilities arising on or before the date the Plan becomes effective (other than those liabilities created by the Plan) and a release of the Receiver, his advisors, and other professionals retained from all claims, suits, judgments, and other liabilities relating to the Receivership Entities, the Plan, or the general administration of the Receivership Estate. *Id*. at §§ 5.1 and 5.2. These releases also terminate all claims against the Receivership and Receivership Entities and will permit the final closure of the SEC Action at a future date. *Id*. The releases do not release claims in any pending litigation or any future litigation that may be brought by the Receiver. *Id*. at § 3.5.

V. STANDARD OF REVIEW

In the Second Circuit, so long as the proposed distribution plan is "fair and reasonable," it is within a district court's discretion to approve a receiver's distribution plan and to defer to the receiver's choices for the plan's details. *SEC v. Wang*, 944 F.2d 80, 81 (2d Cir. 1991); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002) (holding that District Court's decision relating to the choice of distribution plan is reviewed for abuse of discretion); *SEC v. Amerindo Inv. Advisors Inc.*, No. 05 Civ. 5231, 2016 WL 10821985, at *3 (S.D.N.Y. May 20, 2016); *see also SEC v. Orgel*, 407 F. App'x 504, 505 (2d Cir. 2010) (affirming approval of distribution plan as "within the equitable discretion of the District Court"). Courts in the Second Circuit also give considerable deference to the judgment and view of the SEC in these matters. *See SEC. v. AR Cap., LLC*, No. 19 Civ. 6603, 2021 WL 1988084, at *3 (S.D.N.Y. May 18, 2021) (internal citations omitted) (stating that a court should give substantial weight to the SEC's views regarding a plan's merits); *SEC v. Amerindo Inv. Advisors, Inc.*, No. 05 Civ. 5231, 2017 WL 3017504, at *2 (S.D.N.Y. July 14, 2017) ("In making its decision, a court. . . should give substantial weight to the SEC's views regarding a plan's merits.") (alteration and citation omitted); *SEC v. Byers*, 637 F. Supp. 2d 166, 175 (S.D.N.Y. 2009) ("The SEC's judgment is entitled to deference from this Court.")

In reviewing an equity receiver's proposed plan of distribution, the Second Circuit has also long acknowledged that district courts have broad authority and discretion to determine how and to whom the money will be distributed. *CFTC v. Alexandre*, No. 22-cv-3822, 2025 WL 252435 at *3 (S.D.N.Y. Jan. 21, 2025) (citing both *SEC v. Fischbach Corp*., 133 F.3d 170, 175 (2d Cir. 1997) and *Eberhard v. Marcu*, 530 F.3d 122, 131 (2d Cir. 2008)); *see also SEC v. Certain Unknown Purchasers of Common Stock,* 817 F.2d 1018, 1020 (2d Cir. 1987) ("[I]n shaping equity decrees, [a] trial court is vested with broad discretionary power; appellate review is correspondingly narrow.") (quoting *Lemon v. Kurtzman,* 411 U.S. 192, 200 (1973)). This authority derives from "the inherent power of a court of equity to fashion effective relief," *SEC v. Byers*, 609 F.3d 87, 91 (2d Cir. 2010) (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)), and includes the ability to distribute receivership assets, *see, e.g.*, *Orgel*, 407 F. App'x at 506; *Credit Bancorp*, 290 F.3d at 82-83.

VI. DISCUSSION

The Receiver's Distribution Plan is fair and equitable. Under the Plan, all Investor and Non-Investor Claimants with Allowed Claims will receive a total return of at least 61.57% of their loss. The Receiver has conferred with the SEC, and the SEC consents to the Receiver's proposed Plan. The Court should grant this Motion.

The overall objective in any equity receivership is to "determine how and to whom the money will be distributed." *SEC v. Pension Fund of Am. L.C.*, 377 F. App'x 957, 962 (11th Cir. 2010). And to do so in a way that "grant[s] fair relief to as many investors as possible." *SEC v. Torchia*, 922 F.3d 1307, 1311 (11th Cir. 2019); *see also SEC v. Wealth Mgmt., LLC*, 628 F.3d

323, 334 (7th Cir. 2010) ("The goal in [a] securities-fraud receivership[] . . . [is] the fair distribution of the liquidated assets."). Therefore, a receiver is tasked with "marshal[ing] the receivership entities' assets . . . so that [they] may be distributed to the injured parties in a manner the court deems equitable." *SEC v. Total Wealth Mgmt., Inc.*, No. 15-cv-226, 2018 WL 3456007, at *6 (S.D. Cal. July 17, 2018) (citations omitted). "[W]hen funds are limited, hard choices must be made." *Off. Comm. Of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006) (internal quotations omitted). When the purported value of investor claims exceeds funds available for distribution, a plan must be crafted "equitably and fairly, with similarly-situated investors or customers treated alike." *SEC v. Credit Bancorp, Ltd.*, 99-Civ-11395, 2000 WL 1752979, at *13 (S.D.N.Y. Nov. 29, 2000), *aff'd*, 290 F.3d 80 (2d Cir. 2002).

The Receiver's Plan accomplishes these goals. First, the vast majority of assets collected and secured by the Receiver and available for distribution under the Plan will be paid to Investor Claimants, the class that bore the brunt of the losses from the fraud. Second, in proposing to use the Rising Tide method to determine the amount of distributions to be made to Allowed Investor Claimants, the Receiver aims to ensure that Investor Claimants who withdrew little or no money during the fraud will receive an equitable return when compared with those investors who did receive money during the fraud. Finally, given the minimal impact to Allowed Investor Claimants, the Plan also seeks to pay Allowed Employee and Unsecured Creditor Claimants *pari passu* such that these Claimants will receive at least 61.57% of the Allowed Amount of their claim. The Receiver's Plan adopts the longstanding, guiding principle of an equity receiver that "equality is equity." *Cunningham v. Brown*, 265 U.S. 1, 13 (1924).

A. **Pro Rata Distribution is Appropriate in Cases Involving Ponzi Schemes**

The Receiver proposes to make distributions to Allowed Investor Claimants *pro rata* from the consolidated pool of assets. A *pro rata* approach has been deemed "especially appropriate for fraud victims of a Ponzi scheme." *Credit Bancorp*, 290 F.3d at 89 (internal quotations omitted). Courts in the Second Circuit have favored *pro rata* distribution of assets in Ponzi schemes, where, as here, (1) the funds of defrauded victims are commingled and (2) victims are similarly situated with respect to their relationship to the defrauders. *Id*. at 88-89 (citing *Cunningham* 265 U.S. at 13); *see also Alexandre*, 2025 WL 252435, at *4-5 (affirming *pro rata* distribution as proper in a Ponzi scheme); *CFTC v. Walsh*, 712 F.3d 735, 749 (2d Cir. 2013) (same)*; SEC v. Malek*, 397 F. App'x 711, 715-16 (2d Cir. 2010) (describing benefits of *pro rata* distribution in Ponzi schemes).

The commingling of funds within a scheme need not be pervasive. The Second Circuit has determined that "any commingling is enough to warrant treating all funds as tainted." *Byers*, 637 F. Supp. 2d at 177-78 ("[T]here is some evidence that commingling occurred, and the law does not appear to require more than that."). Even in circumstances where certain investor funds may be potentially traced, courts have nonetheless determined that *pro rata* distribution is equitable and appropriate because "whether at any given moment a particular customer's assets are traceable is 'a result of the merely fortuitous fact that the defrauders spent the money of the other victims first.'" *Credit Bancorp*, 290 F.3d at 89 (quoting *United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996)).

Here, the Court has already determined—and there is no dispute—that the Funds operated as a Ponzi scheme, and assets were inextricably commingled to carry out the fraud. Claims Order at 1 ("[T]he Court finds that Qin perpetuated a Ponzi scheme using two investment funds, and commingled money from both in furtherance of the scheme.") and 8 (same). The very nature of a Ponzi scheme involves the commingling of assets—*see Eberhard*, 530 F.3d at 132 n.7 (defining a Ponzi scheme as one "where earlier investors are paid from the investments of more recent investors, rather than from any underlying business concern")—and Qin freely commingled investor assets to make payments to other investors, fund personal investments and expenses, and to otherwise conceal the fraud. *See* Claims Order at 7 (holding that Qin "solicited millions of dollars in investor funds, and utilized them for improper or other personal means rather than legitimate trading activity or business operations.")

In determining whether parties are "similarly situated," the Second Circuit has held, in various contexts, that each party's position "need not be identical, but there should be a reasonably close resemblance of facts and circumstances." *Malek*, 397 F. App'x at 716; *Byers*, 637 F. Supp. 2d at 180. In *Byers*, the court found that investors were similarly situated because the separate entities were commonly managed, and investments were regularly pooled to offset expenses across all entities. *Id.* District Courts in this Circuit have also found victims to be similarly situated if they invested in separate legal entities but their investments were "part of a unified scheme to defraud," or where the defendant exercised control over all victims' accounts. *See id.* at 181 (internal quotations omitted); *SEC v. McGinn, Smith & Co., Inc.*, No. 1:10-cv-457, 2016 WL 6459795, at *3 (N.D.N.Y. Oct. 31, 2016); *Malek*, 397 F. App'x at 716; *SEC v. Amerindo Inv. Advisors Inc.*, No. 05 Civ. 5231, 2014 WL 2112032, at *14 (S.D.N.Y. May 6, 2014).

Allowed Investor Claimants in this Receivership had a similar (if not identical) relationship to Qin and the Entity Defendants. While Claimants may have deposited monies in accounts registered in the name of separate Funds, both Sigma Fund and VQR Fund were commonly managed by Qin and the Receivership Entities and used by Qin and the Receivership Entities to orchestrate the fraud. *See* Claims Order at 2. Investor deposits were often pooled by Qin to offset expenses across the various Receivership Entities as part of a unified scheme to defraud. *See id*. at 7-8. Moreover, the Court has already determined that Qin created VQR Fund "to solicit additional investor funds to perpetrate the scheme," "routinely diverted Sigma Fund investor assets to pay VQR Fund operating expenses," and "used VQR Fund to perpetrate the scheme such that money also flowed from VQR Fund to Sigma Fund." *Id*. at 3.

In granting the Receiver's claims administration procedures, this Court has already held that "the [] Funds shall be treated as one for the purposes of implementing the Receiver's procedures," and recognized the benefit of a *pro rata* distribution scheme. *Id*. at 8 and 10 (internal citations omitted) ("Courts have favored pro rata distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders."). Courts of appeals have recognized that a district court acts within its discretion in approving a *pro rata* distribution plan in these circumstances. *Credit Bancorp*, 290 F.3d at 89, 91; *SEC v. Infinity Grp. Co.*, 226 F. App'x. 217, 218 (3d Cir. 2007); *see also SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331-32 (5th Cir. 2001) (affirming *pro rata* distribution even where objecting investors' funds were segregated); *SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992) (finding tracing inequitable and approving *pro rata* distribution); *Wealth Mgmt. LLC*, 628 F.3d at 327, 336 (same).

For the foregoing reasons, the Court should approve the Plan's *pro rata* distribution.

B. <u>Rising Tide is the Fairest and Most Equitable Under the Circumstances</u>

The Rising Tide distribution method provides the fairest and most equitable result for Allowed Investor Claimants. This method enables the Receiver to make a distribution to 90% of Allowed Investor Claimants while bringing all holders of Allowed Investor Claims to a minimum combined total recovery of at least 61.57%, thereby greatly minimizing instances in which one Claimant is proportionally better or worse off than another. Rising Tide "takes into consideration not only how much a person invested with [the Funds], but also what percentage of their investment was returned to them before the Receiver was appointed." *CFTC v. Rust Rare Coin, Inc.*, No. 2:18-cv-00892, 2020 WL 4904165, at *2 (D. Utah Aug. 20, 2020). The "goal is for all investors to ultimately receive a distribution equal to the same percentage of their cumulative investment, irrespective of whether the distribution was made directly by the Ponzi scheme or by a receiver from the assets remaining from the Ponzi scheme." *SEC v. Aequitas Mgmt., LLC,* No. 3:16-cv-00438, 2020 WL 1528249, at *8 (D. Or. Mar. 31, 2020). Accordingly, under Rising Tide, investors who received payments during the Ponzi scheme are entitled to receive a smaller *pro rata* payment from the Receivership Estate than those who received little or no payments during the Ponzi scheme. Moreover, investors who previously received payments exceeding their *pro rata* share of the total distribution will receive no distribution from the Receivership Estate. *SEC v. Parish*, No. 2:07-cv-00919, 2010 WL 5394736, at *3 (D.S.C. Feb. 10, 2010).

Courts consider Rising Tide the "method most commonly used (and judicially approved) for apportioning receivership assets" precisely because it levels the rates of recovery among similarly situated investors. *SEC v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012) (collecting cases); *SEC v. Varacchi,* No. 3:17-cv-00155, 2021 WL 10361074, at *13 (D. Conn. July 30, 2021); *see also Alexandre*, 2025 WL 252435, at *6; *SEC. v. Callahan*, 193 F. Supp. 3d 177, 199 (E.D.N.Y. 2016); *see also CFTC v. Equity Fin. Grp., LLC*, No. Civ.04-1512, 2005 WL 2143975, at *25 (D.N.J. Sept. 2, 2005) (same). The Receiver's proposed Plan similarly levels the playing field and creates parity among similarly situated Investor Claimants by returning to investors as much of their invested capital as possible while closing the gap between investors who received withdrawals prior to the Receivership and those who will receive distributions through the Plan.

C. <u>Rising Tide is Superior to Net Investment as a Distribution Method</u>

The Rising Tide method also provides a fairer result than the Net Investment method, the other predominant distribution method employed by equity receivers in a Ponzi scheme. Under a Net Investment methodology, distributions are calculated as follows: *First*, all withdrawals or payments to an investor prior to the Receivership are subtracted from the investor's total verified deposit amount to determine the investor's "net loss" or net cash amount. *Parish*, 2010 WL 5394736, at *3. Any investor who suffered a "net loss" would receive a *pro rata* distribution calculated based on the "ratio of the allowed amount of the investor's claim to the aggregate of all allowed claims." *McGinn, Smith & Co.*, 2016 WL 6459795, at *1. In other words, using a Net Investment methodology, distributions are calculated by subtracting verified withdrawals from verified deposits and then multiplying the difference by a fixed *pro rata* percentage. *Alexandre*, 2025 WL 252435 at *5. While the Net Investment method provides a distribution to all Claimants with a net loss regardless of whether the Claimant received a distribution during the fraud, it exacerbates the discrepancies in recovery rates between investors who withdrew funds during the fraud who will have a much higher rate of recovery versus investors who did not withdraw, and, therefore, have a much lower rate of recovery.

As the following statistics demonstrate, the Receiver's Plan lessens this gap. All 73 Allowed Investor Claimants will receive a minimum combined total return on their cash investment of at least 61.57%. Alternatively, under Net Investment, only 24 Allowed Investor Claimants (33% of all Allowed Investor Claimants) would receive a return of at least that amount, with certain Investor Claimants receiving a return as low as 48.26%, and other Investor Claimants—namely those who withdrew significant funds during the Ponzi scheme—receiving total returns as high as 95.82%. A Rising Tide distribution materially shrinks the gap between Investor Claimants so that it is much narrower, and assets are more equitably distributed. In addition, under Rising Tide, the 27 Allowed Investor Claimants who did not withdraw any money during the fraud—and have not yet received any recovery—will receive an average Initial Distribution of approximately $362,000, almost $78,000 more than they would recover under Net Investment. The Receiver's Plan also results in a higher average distribution to each Allowed Investor Claimant eligible to receive a distribution of approximately $458,000, which is approximately $44,000 more than a distribution under Net Investment would provide. These statistics are summarized in the table below and in the charts attached as **Exhibit C** to the Fokas Decl.

Investor	Rising Tide	Net Investment
27 Allowed Investor Claimants had an **IRP of 0%**.	Under Rising Tide and following the Initial Distribution, each receives a total distribution that brings them to an IRP of **61.57%**.	Under Net Investment and following the Initial Distribution, each receives a distribution that brings them to an IRP of **48.26%**.
39 Allowed Investor Claimants had an **IRP greater than 0% but less than 61.57%**.	Under Rising Tide and following the Initial Distribution, each receives a total distribution that brings them to an IRP of **61.57%**.	Under Net Investment and following the Initial Distribution, each receives a distribution that brings them to an IRP ranging from **49.51% - 78.89%**.
7 Allowed Investor Claimants had an **IRP greater than 61.57%**.	Under Rising Tide, these claimants do not receive a distribution, as their IRP already exceeds the Rising Tide Percentage of **61.57%**.	Under Net Investment and following the Initial Distribution, each receives a distribution that brings them to an IRP ranging from **81.98% – 95.82%**.

D. <u>The Distribution Plan Provides the Largest Recovery to the Greatest Number of Allowed Investor Claimants.</u>

The Receiver's Plan provides the greatest benefit to the greatest number of Claimants, with 90% of Allowed Investor Claimants (66 out of 73 total) receiving an Initial Distribution under the Plan. Combined with the Non-Investor Claimants who hold Allowed Claims, the Receiver's Plan provides an Initial Distribution to 78 out of 85 Allowed Claimants, or approximately 92% of all Allowed Claims.

When assessing distribution procedures, courts generally favor the method that will achieve the highest distribution for the largest number of investors. *See e.g., Equity Fin. Grp., Inc.*, 2005 WL 2143975 at *25 (D.N.J. Sept. 2, 2005) (approving rising tide where 85% of investors would receive a higher distribution than under net investment); *Parish*, 2010 WL 5394736 at *4, *11 (approving rising tide where 71% of investors would fare better than under net investment). Courts have tended to use the Net Investment method where a large number of investors would receive nothing under a Rising Tide plan. *Huber*, 702 F.3d at 907. In *Byers*, the court favored the Net Investment method because 45% of investor claimants there would not have received a distribution under Rising Tide. 637 F. Supp. 2d at 182. Similarly, in *CFTC v. Barki,* the court approved net investment method primarily because under rising tide only 45% of investor claimants would have received a distribution. No. 3:09 CV 106, 2009 WL 3839389 at *2 (W.D.N.C. Nov. 12, 2009). This is not a concern here, as 90% of Allowed Investor Claimants, and 92% of all Allowed Claimants, will receive a distribution using Rising Tide. The Receiver's Plan is fair and equitable to the largest number of Claimants, supported by the SEC, and should be approved by the Court.

E. <u>The Receiver's Treatment of Non-Investor Claimants is Fair and Equitable</u>

The Receiver's Plan proposes to pay Allowed Non-Investor Claimants *pari passu* and based on the same Rising Tide Percentage as Claims held by Allowed Investor Claimants. Such treatment promotes equity because each Allowed Investor Claimant would be minimally affected by *pari passu* treatment of Allowed Non-Investor Claimants, but such Non-Investor Claimants would likely receive no recovery if their Claims are subordinated to investors and not included in this distribution. The total Allowed Amount for Resolved Non-Investor Claims represents only 0.174% of the total Allowed Amounts for all Allowed Claims, regardless of classification. Under the Plan, Allowed Non-Investor Claimants will receive a total of approximately $67,032.82 in the Initial Distribution, or 0.22% of the entire Initial Distribution.[13]

[13] One objecting claimant whose Objection is currently before the Court, seeks an amount that if allowed by the Court, would increase the total percentage of Allowed Amounts for Resolved Non-Investor Claims to 2.23% of all

In situations where, as here, the impact to Investor Claimants is minimal, courts have found that treating Non-Investor Claimants *pari passu* was fair and equitable. *See SEC v. TCA Fund Mgmt. Gr. Corp.*, No. 20-21964-CIV, 2022 WL 17816956, at *6 (S.D. Fla. Dec. 2, 2022) (concluding that "equity allows" for investors and creditors to participate in the rising tide distribution "as equals"); *Rust Rare Coin, Inc.*, 2020 WL 4904165, at *4 (overruling objections to *pari passu* treatment of non-investors on equitable grounds); *Alexandre*, 2025 WL 252435 at *2 n.2, *4 (finding receiver's plan, which included *pari passu* treatment of non-investor claims, fair and reasonable); Order at ¶ 7, *SEC v. Varacchi*, No. 3:17-cv-00155 (D. Conn. Oct. 4, 2018), ECF No. 69, *aff'd Horwitt v. Flatiron Partners, LP*, No. 21-2245, 2023 WL 192500 (2d Cir. Jan. 17, 2023) (finding "fair and reasonable" *pari passu* treatment of non-investor claimants when such claimants constituted a minimal proportion of the total claims pool). Based on the foregoing, the use of Rising Tide and the payment of Non-Investor Claimants *pari passu* with Investor Claimants is both fair and equitable.

F. <u>The Distribution Plan Comports With Due Process</u>

The notice procedures set forth in the Plan and summarized below are fair and reasonable. The Receiver will provide each Claimant notice and an opportunity to be heard on and object to the Plan. Within one business day of filing this Motion, the Receiver will post a copy of it, along with the attached Plan, on the Receivership Website and email notice of the same through the Claims Portal to all Claimants who submitted Claims. Plan at § 6.5. Claimants will have 21 days from the date the Receiver files the Motion with the Court to file a brief with any objection. Plan at § 4.3.2. The Receiver intends to submit a reply, as necessary, to respond.

Allowed Claims. Although the Receiver believes that the claim lacks merit, and should be denied, if it is allowed by the Court, and the Claimant is entitled to payment pursuant to the Plan, the Receiver still believes it is fair and equitable for Non-Investor Claimants with Allowed Amounts to receive distributions for their losses rather than have their claims subordinated.

Id. The foregoing procedures satisfy due process, which requires notice and an opportunity to be heard. *See Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case." (internal citations omitted)). The proposed notice procedures are consistent with previous notice procedures proposed by the Receiver and approved by this Court. *See* Claims Order at 8-9; *see also Alexandre*, 2025 WL 252435 at *3 (acknowledging as adequate Receiver's procedures, which provided email and claims portal notice to creditors and allowed time for objections and responses).

VII. CONCLUSION

The proposed Plan is fair, reasonable, supported by the SEC, and in the best interest of the Receivership Estate. The Receiver respectfully requests this Court enter an order approving the Receiver's proposed distribution procedures and authorizing (i) use of a *pro rata* distribution; (ii) use of Rising Tide to calculate distributions to Allowed Claimants; (iii) the implementation of the Receiver's Plan; (iv) the establishment of a Reserve in the amount of $3.16 million; and (v) the Receiver to disburse approximately $30.3 million in an Initial Distribution to Allowed Claimants in accordance with the Plan. To ensure all Allowed Claimants have notice of and are bound by the Court's order, the Receiver will publish a copy of it on the Receiver's Website and email notice of the same to all Claimants via the Claims Portal.

Dated: March 31, 2026,
New York, New York

/s/ Jimmy Fokas

BAKER & HOSTETLER LLP
Jimmy Fokas
Keith Murphy
45 Rockefeller Plaza
New York, NY 10111-0100
Tel.: (212) 589-4200
jfokas@bakerlaw.com
kmurphy@bakerlaw.com

Attorney for Receiver Robert A. Musiala, Jr.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York and Section 4(b) of the Court's Individual Rules and Practices in Civil Cases, I hereby certify that the foregoing memorandum of law complies with the word count limitation as set forth therein. As measured by the word processing system used to prepare it, the foregoing memorandum of law contains 7,817 words.

Dated: March 31, 2026

/s/ Jimmy Fokas
Jimmy Fokas